

CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 06-12

AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE CHAPTER 15.04 TO INCORPORATE A RIGHT-OF-WAY PRESERVATION AND RESTORATION POLICY

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WHEREAS, the City has the obligation to manage its rights-of-way for the benefit and protection of its residents; and

WHEREAS, the cutting or opening of streets can have an adverse impact on the quality and service life of streets and can increase the cost and frequency of maintenance or repair; and

WHEREAS, the City desires to preserve the quality and service life of City streets by ensuring that newly constructed, reconstructed or improved streets are not unnecessarily cut or opened for utility work, and are completely restored by a utility that cuts or opens a protected street.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapter 15.04 of the Tigard Municipal Code is amended as shown in Attachment A to this Ordinance.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By Unanimous vote of all Council members present after being read by number and title only, this 8<sup>th</sup> day of August, 2006.

Catherine Wheatley  
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 8<sup>th</sup> day of August, 2006.

C. Dirksen  
Craig Dirksen, Mayor

Approved as to form:

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City Attorney

\_\_\_\_\_  
Date

**ATTACHMENT A**  
**[New Text Underlined]**

**15.04.105      Coordination of Construction.**

1. All permittees shall make a good faith effort to coordinate their construction schedules with those of the City and other users of the rights-of-way.

2. Unless otherwise agreed to in writing by the City, at least 60 days prior to the installation or upgrading of utility facilities or a utility system (as defined in chapter 15.06) that requires a cut or opening in the street of 400 linear feet or greater, the person intending to perform such work shall provide notice to the City and all other utilities identified by the City as utilities that are franchised or permitted to place facilities within the project area.

a. The notice must be provided in a manner which documents receipt of notice by utilities.

b. The notice shall state the anticipated location, project schedule and general description of the proposed work.

c. No permits for work shall be issued until notice has been given.

3. All utilities performing work in the rights-of-way subject to the notice requirement set forth in paragraph 2 of this section shall cooperate with other utilities with permits to do work in the same location at or near the same time to coordinate construction and colocate facilities.

4. Nothing in this section shall require a utility to reveal proprietary information. A utility shall signify any proprietary information as such and the City will protect such information from disclosure to the extent allowed by law.

5. The notification requirement set forth in paragraph 2 of this section shall not be required for the installation of facilities in new developments that are being processed through the private development review process.

**15.04.135      Right-of-Way Preservation And Restoration Policy**

1. Except as provided in paragraph 3 of this section, after any street has been constructed, reconstructed, paved or improved by any person, the driving surface of the pavement shall not thereafter be cut or opened for a period of 4 years.

a. The City Engineer shall make the final determination on what construction or improvement will result in a limitation set forth in paragraph 1 of this section and shall create, maintain and make available to the public a list of the streets and street segments subject to the limitation. Only streets named on the list shall be subject to the limitation set forth in paragraph 1.

b. The 4 year limitation period shall begin upon the City's acceptance of the completed street or street improvements.

2. Except as provided in paragraph 3 of this section, after the installation or upgrading of utilities that require a cut or opening in the street of 400 linear feet or greater, the pavement surface within 400

feet of that cut or opening shall not be cut or opened for a period of 12 months, provided that the person requesting to cut or open such a surface received notice of the prior street cut or opening pursuant to section 15.04.100. The 12 month limitation period shall begin upon the utility's completion of the restoration of the street.

3. The City Engineer or designee shall grant exceptions to the prohibitions set forth in paragraphs 1 and 2 of this section: (1) in emergency situations (as defined in paragraph 4), (2) when cutting or opening the street is required to locate existing facilities when tunneling, boring, or pushing under the street (e.g., "potholing"), and (3) to provide or maintain utility services to a property when no other reasonably practicable alternative exists within the right-of-way or existing utility easement. The City Engineer or designee may grant exceptions to the prohibitions set forth in paragraphs 1 and 2 of this section when, in the sole discretion of the City Engineer, compelling circumstances warrant the cutting or opening of the street.

a. In granting an exception, the City Engineer may impose conditions determined to be appropriate to completely restore the street and provide equivalent surface quality, durability and rideability. Conditions may include surface grinding, base and sub-base repairs, or similar work, and may include up to a full-width surface paving of the roadway.

b. The City Engineer shall develop and maintain guidelines for use in determining the appropriate restoration conditions that may be imposed under subparagraph (a), and shall consider the guidelines and any other relevant circumstances in imposing restoration conditions.

c. In the event that the City Engineer requires the partial or full repaving of a street segment, the City Engineer may require that a financial security in a form acceptable to the City be provided to the City in the amount of the estimated cost of the repaving prior to performing any work in the City's rights-of-way.

d. The denial of a request for an exemption or the conditional approval of an exemption under this section may be appealed to the City Manager, who shall have 15 business days to determine if the denial or conditional approval complies with the terms of this chapter. Appeals must be in writing and received by the City Manager not more than 15 business days after the applicant's notice of the denial or conditional approval of the request.

4. Notwithstanding the provisions of this section, in emergency situations, any person cutting or opening a street subject to the limitations of this section shall, when reasonably feasible, seek verbal authorization from the City Engineer or designee for an exception. Emergency situations are those in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property. Whether or not verbal authorization was given, the utility operator shall apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work, and the owner of the facility shall be subject to any restoration conditions imposed by the City Engineer pursuant to paragraph 3.

5. Within three years after this provision becomes effective, the City Engineer or designee shall review the application and effectiveness of this section and report the findings of the review to the City Council. The review shall include measurement of its impact on the quality and surface life of City streets, compliance with this section, and the circumstances in which exceptions have been granted and conditions have been imposed under paragraph 3. The City Engineer or designee shall provide all persons who requested permits to cut or open a street subject to the limitations of this section a reasonable opportunity to provide written comments and include in the report all comments received.